

Rules. However, Attachments 1-17 and 23 are complaints in the Bureau's possession received in the last four years regarding the construction and operation of Kay's stations. In addition, the Bureau has received the following "finder's preference" requests targeting Kay's stations for operational violations: Case Nos. 92F167, 92F168, 92F501, 93F581, and 95F602.

Interrogatory: 2-2. Please identify each of Kay's licensed radio facilities about which the Commission has received a complaint concerning its construction or operation.

Response: See response to interrogatory 2-1.

Interrogatory: 2-3. Please identify each report which the Commission has received that Kay may not have constructed and/or may have deconstructed a station for which he is licensed.

Response: See response to interrogatory 2-1.

Interrogatory: 2-4. Please identify each of Kay's licensed stations which the Commission alleges that Kay either did not construct in a timely manner or deconstructed subsequent to construction.

Response: The complaints produced in response to Interrogatory 2-1 contain allegations of violations by Kay of the Commission's construction and operating requirements. The complaints raise substantial and material questions relating to Kay's operating practices. Because Kay refused to respond to the Bureau's requests for written statements of fact, pursuant to § 308(b) of the Act, (see response to Interrogatory 1-2), with evidence establishing his compliance with the Commission's rules, the Commission has designated an issue to determine whether all of Kay's stations were constructed in a timely fashion, or were

deconstructed for a period exceeding one year. (See HDO Paragraph 10(c)).

Interrogatory: 2-5. Please identify each complaint that the Commission has received that Kay is falsely reporting the number of mobile units he serves in order to avoid the channel sharing and recovery provisions of the Commission's Rules.

Response: This request is overbroad in that it is not limited in time, and may include complaints that did not form the basis for the HDO. It also seeks to have the Bureau reveal the identity of informants, and, as such, is not discoverable under the Commission's Rules. However, Attachments 1, 2, 3, 5, 7, 11, 18, 19, 20 and 22 are complaints in the Bureau's possession received in the last four years regarding the mobile loading of Kay's stations.

Interrogatory: 2-6. Please identify by call sign, location(s) and frequency(ies) each station concerning which the Commission alleges that Kay has falsely reported the number of mobile units he serves.

Response: The complaints produced in response to Interrogatory 2-5 contain allegations of violations by Kay of the Commission's rules. The complaints raise substantial and material questions relating to Kay's operating practices. Because Kay refused to respond to the Bureau's requests for written statements of fact, pursuant to § 308(b) of the Act (see response to Interrogatory 1-2), with evidence establishing his compliance with the Commission's rules, the Commission has designated an issue as to whether Kay has violated the Commission's channel-sharing and recovery rules. (See HDO Paragraph 10(c)).

Interrogatory: 2-7. Please state each fact which supports the Commission's allegation that station WNWK982 at Mount Lukens, California was being operated in the trunked mode in violation of Rule Section 90.113.

Response: James LaFontaine and Benjamin Nakamiyo, engineers at the Complaints and Investigations Bureau office in Los Cerritos, California, inspected the Station on July 22, 1994, in response to a complaint received from Harold Pick (complaint attached hereto as Attachment 24). The station transmitted a digital burst signal every ten seconds. This burst of signal (data burst) is used to update any mobile units that have joined the system (i.e., been turned on). In addition, this data burst is used to detect any of the mobile units wishing to communicate via an inactive repeater. This data burst is a scheme of controlling the mobiles and repeaters of a trunked radio system which was developed by the E.F. Johnson Company. Uniden America Corporation uses this same scheme for controlling its trunked systems.

The station consisted of a Uniden MRS Series Synthesized Repeater. On the back panel of the repeater was a label bearing the words "Fast Access System Trunking", abbreviated F.A.S.T. This label indicates that the repeater is a trunked repeater. In addition, there was also an Astron RM-50M Power Supply, Communications Specialist model TP-32 Shared Repeater Tone panel, and a Malcom International Power Amplifier.

The back panel also contained a coaxial cable jack labelled "RNDL." RNDL is an abbreviation for Repeater Network Data Link. This RNDL port was interconnected via a coaxial cable to the other thirteen (13) repeaters of this trunking system. On page 1 of Uniden's F.A.S.T. Trunking Systems Planning guide is a description of the purpose of the

RNDL port which reads: "The Repeater Network Data Link (RNDL) bus is a high speed (approximately 19.2 kilobaud) serial data bus that connects the 'smart' channels to each other. The RNDL bus continuously updates each repeater channel regarding the state of each of the other repeaters in the system."

Lafontaine made a block diagram of all of the stations which were interconnected via the RNDL cable and wrote down the frequency which had been written on each station. Lafontaine then measured the frequency and output power of station WNWK982 to be 851.5623 MHz and 66 watts respectively. At the conclusion of the inspection, Marc Sobel disconnected the RNDL line from this repeater.

After leaving the building, Engineer Lafontaine entered the Direction Finding ("DF") vehicle and began monitoring 851.5625 MHz. He noted that the data burst was not present and, more importantly, whereas the frequency had been very busy prior to the inspection, it was now silent. It appeared that by disconnecting the RNDL line the repeater was taken out of service.

Later, a search of the Commissions licensing records revealed that the other 13 stations of this trunking system were licensed under two separate call signs, WNPJ874 and WNYM402, to James Kay, Jr. as trunked (YX) frequencies.

Interrogatory: 2-8. With respect to the inspection of station WNWK982 at Mt. Lukens, CA which allegedly occurred on July 22, 1994, describe in detail each procedure and/or

technique employed during such inspection. By way of explanation and not of limitation, the description should set forth, inter alia, the dates, times and precise locations of the employment of each such procedure or technique; all of the equipment employed (including make, model, serial number and when purchased) and how the equipment was hooked together; how the equipment was deployed; how and where any measurements were made; exactly what measurements were made; how the origin of any monitored transmission was determined; any relevant dates of calibration of the equipment used and the procedures used in such calibration.

Response: The Bureau objects to this interrogatory because it contains numerous subparts, ignores the limitation that the Presiding Judge placed on Kay in his Order, FCC 95M-28 (released January 30, 1995), limiting Kay to ten interrogatories per paragraph of the HDO. Despite this objection and without waiver thereof, the Bureau states as follows.

WNWK982 is an FCC license authorizing James Kay Jr. to operate a radio station on Mt. Lukens on the frequency 851.5625 MHz. The authorization is for a "Conventional" (GX) station. On or about July 22, Engineer Lafontaine monitored the frequency from the Commission office, took a bearing on the signal, and determined that it was coming from the direction of Mount Lukens. During the monitoring period Lafontaine noted that the station would transmit a short burst of signal every 10 seconds. In addition, there were conversations taking place on the frequency. Lafontaine noted that the station transmitted the FCC call sign WNWK982 in Morse code approximately every 30 minutes.

On July 22, 1994, at 10:00 a.m. Engineer Lafontaine, using a mobile direction finding vehicle, left the Los Angeles FCC office enroute to Mt. Lukens, CA. While enroute Lafontaine calibrated the direction finder by taking a bearing on the Marine weather station on the frequency 162.55 MHz which transmits continuously from Mt. Wilson. At 11:30

a.m. Lafontaine pinpointed the transmissions of station WNWK982 to the Advanced Electronics Building at Mt. Lukens, California. The vehicle contains a model MADF-1E, serial number 90 radio Direction Finder and a Watkins Johnson model WJ8617B-15, serial number 1 receiver, both of which were used to pinpoint the source of the transmitted signal of WNWK982. The vehicle direction finder contains a visual display which provides a bearing to the signal with respect to the vehicle. In other words, if the signal is coming toward the front of the vehicle the Direction Finder readout will so indicate. To pinpoint the location of a signal the vehicle operator needs to tune in the signal on the receiver and merely drive in the direction indicated by the Direction Finder visual display. Using this equipment, Lafontaine tracked the source of the WNWK982's signal to the Advanced Electronics Building at Mt. Lukens.

At 1:00 p.m. Marc Sobel arrived at the mountain top site to accompany Lafontaine on the station inspection. Marc Sobel was acting as James Kay, Jr.'s representative for the inspection, provided entry into the building, and pointed out station WNWK982. Lafontaine requested that Sobel not disconnect any cables to the repeater and then proceeded to draw a block diagram of the repeater system. The block diagram showed 14 repeater stations which had been interconnected by way of the RNDL (Repeater Network Data Link) port on each repeater. A coaxial cable was used to interconnect the repeaters.

After completing the block diagram Lafontaine connected the Commission's power meter to the repeater in question so that he could measure the power output of the

transmitter. The power meter was inserted into the transmission line by disconnecting the transmission line at the transmitter Radio Frequency (RF) output terminal, connecting one side of the power meter to this terminal and connecting the other side of the power meter to the transmission line. The power output of the transmitter was measured at 66 watts. The power meter that Lafontaine used was a Bird model 43 Thruline Wattmeter, serial number 65042. This meter was last calibrated November 29, 1993 at the FCC Laboratory in Columbia, Maryland.

Lafontaine then connected a frequency counter to a Bird model 4275 signal sampler which was attached to the Bird wattmeter. The frequency was then measured to be 851.5623 MHz. An OPTO model 3000A frequency counter with an internal TCXO (temperature compensated crystal oscillator) was used. The TCXO is an option from OPTO which improves the accuracy of the counter to .2 parts per million. This counter was calibrated by the factory prior to shipment and in addition, Lafontaine checked its accuracy by comparing its readout with the Hewlett Packard model 107BR, serial number 708-00296 Quartz Frequency Standard located at the Commission's office in Los Cerritos, CA.

After making the power and frequency measurements, the power meter was disconnected and the transmission line was reconnected to the transmitter. At this time Marc disconnected the coaxial cable from the RNDL port of this repeater. No measurements were made on the other 13 repeaters. A search of Commission licensing records revealed that the other 13 repeaters were licensed as trunked repeaters to James Kay, Jr. under two separate

call signs, WNPJ874 and WNYM402.

Interrogatory: 2-9. With respect to paragraph 2 of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 2-10. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to preceding interrogatory.

With regard to Paragraph 3 of the HDO:

Interrogatory: 3-1. Please state each relevant fact and the relevant dates as to each and every name listed in paragraph 3 of the HDO which support the basis for the Commission's allegation that Kay may have conducted business under a number of different names.

Response: Kay has refused to respond to the Bureau's requests for further written statements of fact, pursuant to Section 308(b) of the Act, with a list of names under which he does business. See response to Interrogatory 1-2. He has indicated in a declaration submitted in conjunction with other litigation that he holds FCC licenses in his own and other names. See Attachment 25. In the Complaint filed by Kay in that litigation Kay admitted he does business as Southland Communications. See Attachment 26. Attachment 3 to the

Bureau's Request for Admissions of Fact and Genuiness of Documents is a document in which Kay appears to represent that he does business under the name Lucky's Two Way Radios. Attachment 14 to the Bureau's Request for Admissions of Fact and Genuiness of Documents is a document in which Kay appears to represent that he holds an interest in two closely held corporations, Buddy Corp., and Oat Trunking Group. The list of names in Paragraph 3 of the HDO was compiled over time on the basis of the experience of the licensing staff in Gettysburg, PA, including Ronald Fuhrman, the experience of FCC Complaints and Investigations Bureau field office personnel at Los Cerritos, (including James Zoulek) and interviews with Los Angeles communications providers including Christopher Killian, Harold Pick, and James Doering.

Interrogatory: 3-2. Please state with particularity all relevant facts concerning each instance in which Kay is alleged to have filed applications in multiple names in order to avoid compliance with the Commission's channel sharing and recovery provisions in violation of Rule Sections 90.623 and 90.629.

Response: Attachments 25, 26 and 27 are complaints received regarding the loading practices that Kay uses including the alleged use of fictitious names or employee names to inflate his loading. See also the complaints referenced in the response to Interrogatory 2-5.

Interrogatory: 3-3. With respect to each of the names listed at paragraph three of the HDO, please state each relevant fact upon which the Commission relies for its belief that Kay may have conducted business under a name other than James A. Kay, Jr.

Response: See responses to interrogatories 3-1 and 3-2.

Interrogatory: 3-4. Please identify each station on which Kay is alleged to have inflated his loading by reporting the same mobile users on multiple licenses.

Response: The complaints produced in response to Interrogatory 3-2 contain allegations of violations by Kay of the Commission's channel sharing and recovery provisions. The complaints raise substantial and material questions relating to Kay's operating practices. Because Kay refused to respond to the Bureau's request for written statement of fact, pursuant to § 308(b) of the Act (see response to Interrogatory 1-2), with evidence establishing his compliance with the Commission's rules, the Commission has designated an issue as to whether Kay has falsely reported his loading, in violation of the Commission's channel sharing and recovery provisions. (See HDO Paragraph 10 (c)).

Interrogatory: 3-5. With respect to each station on which Kay is alleged to have inflated his loading by reporting the same mobile users on multiple licenses, please identify each mobile user which Kay is alleged to have reported on multiple licenses.

Response: See response to preceding interrogatory.

Interrogatory: 3-6. With respect to each instance in which Kay is alleged to have inflated his loading by reporting the same mobile users on multiple licenses, please state the number of mobile units which Kay is alleged to have reported with respect to each of the multiple licenses.

Response: See response to interrogatory 3-4.

Interrogatory: 3-7. With respect to paragraph 3 of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 3-8. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to preceding interrogatory.-

With regard to Paragraph 4 of the HDO:

Interrogatory: 4-1. Please state all relevant facts concerning each instance in which Kay is alleged to have caused interference willfully or maliciously to a radio system or radio station.

Response: Attachments 21, and 28-36 reflect complaints alleging that Kay deliberately and maliciously interfered with the radio communications of others. Attachments 37-38 also relate to alleged instances of deliberate interference. The persons complaining have actual knowledge of the matters discussed in the complaints. In addition, Charles Doering, Harold Pick, Edward Cooper, Richard Lewis, Charles and Cornelia Dray, Chris Killian, Dave and Carla Pfeiffer, Dr. Michael Steppe, Robert Hansen and Gary Van Diest are believed to have knowledge of instances of deliberate and/or malicious interference. Also relevant are allegations contained in documents filed in the Browning Ferris Industries proceeding. Kay is a party to that proceeding and already possesses the referenced documents. Discovery of

certain other complaints would reveal the identity of informants and is therefore not discoverable under the Commission's Rules.

Interrogatory: 4-2. Please identify each radio station or system which Kay is alleged to have employed in willfully or maliciously causing interference to another radio station or radio station.

Response: See response to preceding interrogatory.

Interrogatory: 4-3. Please identify each radio system or radio station which is alleged to have suffered interference which was willfully or maliciously caused by Kay.

Response: See response to interrogatory 4-1.

Interrogatory: 4-4. Please identify each person or entity which is alleged to have suffered interference which was willfully or maliciously caused by Kay.

Response: See response to interrogatory 4-1.

Interrogatory: 4-5. Please identify each licensee who is alleged to have been coerced or misled by Kay into retaining him as its communications provider by means of Kay's willfully or maliciously causing interference to the licensee's radio station or radio system.

Response: See responses to Interrogatories 4-1 and 5-1.

Interrogatory: 4-6. Please identify each person who is alleged to have suffered interference willfully or maliciously caused by Kay who was thereafter called on by Kay or his sales staff with an offer to provide the person with higher quality communications service.

Response: See response to interrogatory 4-1.

Interrogatory: 4-7. With respect to each instance in which Kay is alleged to have willfully or maliciously caused interference to another radio station or system, please describe the means by which Kay is alleged to have caused interference willfully or maliciously to another radio station or system. By way of explanation and not of limitation, the description should set forth, inter alia, the date and time of the alleged interference, the equipment used to cause the interference, the equipment suffering the interference, and the type or mode of interference (for example, but not limited to, co-channel interference, adjacent channel interference, or intermodulation interference).

Response: See response to interrogatory 4-1.

Interrogatory: 4-8. With respect to paragraph 4 of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 4-9. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to previous interrogatory.

With regard to Paragraph 5 of the HDO:

Interrogatory: 5-1. Please state all relevant facts concerning each instance in which Kay and/or his sales staff is alleged to have misused or abused the Commission's processes.

Response: Attachments 21, 27, and 39-42 are complaints alleging that Kay misused and/or

abused the Commission's processes. The persons named therein have direct knowledge of the facts at issue. In addition, Gary Van Diest, Don Ro d/b/a Accurate Concrete, Browning Ferris Industries, PCL Freight Service, Dave and Carla Pfeiffer, Charles and Cornelia Dray, Vincent Cardaro, Richard Lewis, Edward Cooper, Roy Jensen, Kevin Hessman, Robert Brown and Dr. Michael Steppe are believed to have direct knowledge of relevant facts relating to instances of abuse of process. Also relevant are allegations contained in documents filed in the Browning Ferris Industries proceeding and the Liberty Paving proceeding. Kay is a party to these proceedings and already possesses the referenced documents. Discovery of certain other complaints would reveal the identity of informants and is therefore not discoverable under the Commission's Rules.

Interrogatory: 5-2. Please state all relevant facts concerning each instance in which Kay and/or his sales staff is alleged to have fraudulently induced a person or entity to sign a blank Commission form.

Response: See response to interrogatory 5-1.

Interrogatory: 5-3. Please state all relevant facts concerning each instance in which Kay and/or his sales staff is alleged to have induced a person or entity to sign a form, the intent of which was misrepresented by Kay or Kay's employees.

Response: See response to interrogatory 5-1.

Interrogatory: 5-4. Please state all relevant facts concerning each instance in which Kay has allegedly misappropriated a customer's license.

Response: See response to interrogatory 5-1.

Interrogatory: 5-5. Please identify each person or entity who is alleged to have been fraudulently induced by Kay and/or his sales staff to sign a blank Commission form.

Response: See response to interrogatory 5-1.

Interrogatory: 5-6. Please identify each person or entity who is alleged to have been induced by Kay and/or his sales staff to sign a form, the intent of which was misrepresented by Kay or Kay's employees.

Response: See response to interrogatory 5-1.

Interrogatory: 5-7. Please identify each former licensee from whom and the call sign of each station of which Kay allegedly misappropriated a license.

Response: See response to interrogatory 5-1.

Interrogatory: 5-8. With respect to the information requested by the previous interrogatory, please state the date on which Kay allegedly misappropriated the license and the date on which the former licensee realized the alleged misappropriation.

Response: See response to interrogatory 5-1.

Interrogatory: 5-9. With respect to paragraph 5 of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules.

The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 5-10. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to preceding interrogatory.

With regard to Paragraph 6 of the HDO:

Interrogatory: 6-1. Please state all relevant facts which led the Commission to request information from Kay in the January 31, 1994, letter.

Response: Having received a number of complaints (including those attached hereto bearing dates prior to January 21, 1994) regarding the operating practices of James Kay, Jr., the Bureau directed to Kay an official letter of inquiry, dated January 31, 1994, pursuant to Section 308(b) of the Act, requiring him to provide information necessary to determine whether he was operating in compliance with the Commission's Rules.

Interrogatory: 6-2. Please state all relevant facts which led the Commission to believe that Kay had committed rule violations by not meeting the construction and placed in operation requirements of the Commission's rules.

Response: See response to previous interrogatories.

Interrogatory: 6-3. Please state all relevant facts which led the Commission to request information to enable the staff to determine if stations licensed to Kay have permanently

discontinued operation in violation of the Commission's rules.

Response: See response to previous interrogatories.

Interrogatory: 6-4. Please state all relevant facts which led the Commission to request information to enable the staff to determine Kay's compliance with the channel loading requirements of the Commission's rules.

Response: See response to previous interrogatories.

Interrogatory: 6-5. Please state all relevant facts which led the Commission to request information regarding the stations for which Kay holds licenses as well as those he manages to enable the staff to determine Kay's compliance with the construction and operation requirements of the Commission's rules.

Response: See response to previous interrogatories.

Interrogatory: 6-6. Please state the terms used in the letter from W. Riley Hollingsworth to Kay dated January 31, 1994, by which the Commission staff requested that Kay identify the stations which he manages.

Response: All of the information sought by the Bureau in its January 31, 1994, correspondence is contained in Attachment 4 of the Bureau's Request for Admissions and Genuiness of Documents.

Interrogatory: 6-7. Please identify each radio station or radio system which is authorized to any person named at paragraph three of the HDO which has been reported to the Commission by the United States Forest Service as being located on U.S. Forest Service land.

Response: None.

Interrogatory: 6-8. With respect to paragraph 6 of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 6-9. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to preceding interrogatory.

With regard to Paragraph 7 of the HDO:

Interrogatory: 7-1. Please state each relevant fact which led the Commission staff to request that Kay substantiate the loading of his stations as of a date or after a particular date during January 1994.

Response: See response to interrogatory 6-1.

Interrogatory: 7-2. Please identify each person to which any member of the Commission staff intended to distribute a copy of the customer lists and telephone numbers which the Commission staff requested from Kay.

Response: The information sought in this interrogatory is outside the scope of permissible

discovery. It is irrelevant to the designated issues.

Interrogatory: 7-3. Please identify each entity or person, other than an employee of the Commission, to which the Commission has ever distributed a copy of the letter from Mr. Hollingsworth to Kay dated January 31, 1994.

Response: See response to preceding interrogatory.

Interrogatory: 7-4. Please state each date on which the Commission ever distributed a copy to an entity or person, other than an employee of the Commission, of the letter from Mr. Hollingsworth to Kay dated January 31, 1994.

Response: See response to preceding interrogatory.

Interrogatory: 7-5. With respect to paragraph 7 of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 7-6. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to preceding interrogatory.

With regard to Paragraph 10(g) of the HDO:

Interrogatory: 10g-1. Please identify each of the qualifications which the Commission alleges that Kay lacks to remain a Commission licensee.

Response: See response to interrogatory 1-6.

Interrogatory: 10g-2. With respect to paragraph 10(g) of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 10g-3. With respect to paragraph 10(g) of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 10g-4. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to the preceding interrogatory.

With regard to Paragraph 10(h) of the HDO:

Interrogatory: 10h-1. Please identify each and every license the Commission alleges to have cancelled automatically as a result of a violation of Sections 90.155, 90.157, 90.631, or 90.633 of the Commission' Rules.

Response: The purpose of this proceeding is to determine whether some or all of Kay's stations have been cancelled automatically by operation of law. Therefore, the licenses of all of Kay's stations, including those that he owns, operates and controls, are in issue.

Interrogatory: 10h-2. With respect to paragraph 10(h) of the HDO, do you intend to examine Kay on any matters not discussed in these interrogatories?

Response: This interrogatory is overbroad and requests information relating to the Bureau's litigation strategy. It is not discoverable under Section 1.311(b) of the Commission's Rules. The Bureau intends to examine Kay regarding all matters relevant to the issues designated in the HDO.

Interrogatory: 10h-3. If the answer to the preceding interrogatory is in the affirmative, please specify each matter or instance not discussed in these interrogatories upon which you intend to rely.

Response: See response to the previous interrogatories.

Respectfully submitted,
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March 8, 1995

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DECLARATION OF RICHARD G. ROSE

I, RICHARD G. ROSE, declare:

1. I am over 18 years of age, and fully competent to make this declaration and the facts stated herein are true and correct and within my personal knowledge.

2. I am President of Don Ro, Inc., dba Accurate Concrete Sawing.

3. On or about February 17, 1995, I was contacted by Sharon Bowers, an attorney for the FCC. Her phone number is 717-337-1215, ext. 112.

4. During the brief conversation with Ms. Bowers, which lasted approximately 1-2 minutes, she advised me that the FCC was investigating James Kay and asked if I would be willing to testify in a class action suit against Mr. Kay regarding the circumstances surrounding a prior cancellation of my FCC license. In particular, she wanted me to testify as to my intention to give up my FCC license. I stated that I would be willing to testify in that regard.

5. Ms. Bowers did not give me any specific information about the investigation of Mr. Kay, nor did she tell me not to talk to him.

6. Since February 17, 1995, I have not received any further contact from Ms. Bowers nor from any other person representing the FCC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13 day of May, 1996, at Acovina, California.


RICHARD G. ROSE

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LAW OFFICES
BERGER, KAHN,
SHAFER, MOSS,
FISLER, SIMON
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